

Ordinance No.: 15-49
Zoning Text Amendment No: 05-04
Concerning: MPDUs –finding of financial
infeasibility
Draft No. & Date: 3 – 5/5/05
Introduced: March 22, 2005
Public Hearing: April 26,2005
Adopted: May 18, 2005
Effective: April 1, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Silverman

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- Clarifying the process for allowing an exception for reasons of financial infeasibility to certain conformity requirements regarding residential density or building height in certain zones for a development that includes MPDUs on-site.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-D-1	"DEVELOPMENT PLAN"
Section 59-D-1.6	"Approval by district council"
DIVISION 59-D-2	"PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES"
Section 59-D-2.4	"Action by planning board"
Section 59-D-2.42	"Findings required for approval."

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

*Underlining indicates text that is added to existing laws
by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.*

*Double underlining indicates text that is added to the text
amendment by amendment.*

*[[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.*

** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment (ZTA) No. 05-04 was introduced on March 22, 2005, to clarify the process for allowing an exception to certain master plan, sector plan, and urban renewal plan conformity requirements regarding density and building height for a development that includes MPDUs on-site. The amendment, along with similar amendments in Expedited Bill 4-05 and Subdivision Regulation Amendment 05-01, would modify the Alternative Review Committee (ARC) created in 2004 by replacing the Chair of the Planning Board with the Director of Park and Planning and by allowing the 3 members (the others are the Director of the Department of Housing and Community Affairs (DHCA) and the Executive Director of the Housing Opportunities Commission (HOC)) to be represented by designees. This amendment and SRA 05-01 would also redraft the financial infeasibility provisions enacted in 2004 -- which allow the Planning Board to take certain actions if the ARC finds that applicable master plan height or density limits would make the construction of all required MPDUs in a proposed development financially infeasible -- to clarify their intent and effect without altering their substance.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with a minor modification.

The County Council held a public hearing on April 26, 2005, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on May 4, 2005, to review the amendment. The Committee unanimously recommended enactment of the amendment with further clarifying changes. The Committee emphasized that it does not expect the members of the ARC to routinely delegate their duties on this body to designees, as this and the similar amendments would authorize; rather, the members should participate personally in the ARC's deliberations unless an illness or other emergency, a potential conflict of interest, or a comparable exigent circumstance requires a member to delegate his or her duties to a designee.

The District Council reviewed Zoning Text Amendment No. 05-04 at a meeting held on May 18, 2005, and supported the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 05-04 will be approved as revised.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division-59-D-2 is amended as follows:

DIVISION 59-D-1. DEVELOPMENT PLAN.

* * *

59-D-1.6. Approval by District Council.

59-D-1.61. Findings.

Before approving an application for classification in any of these zones, the District Council must consider whether the application, including the development plan, fulfills the purposes and requirements [set forth] in Article 59-C for the zone. In so doing, the District Council must make the following specific findings, in addition to any other findings which may be necessary and appropriate to [the evaluation of] evaluate the proposed reclassification:

- (a) [That the] The zone applied for [is in substantial compliance] substantially complies with the use and density indicated by the master plan or sector plan, and [that it] does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. However, to [accommodate] permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs[, provided under Chapter 25A] [[that would]] to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing [Opportunity] Opportunities Commission, and the [Chair of the] Director of Park and Planning [Board], or their respective designees.

find that [construction of] a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If [[a finding of financial infeasibility is made]] the Committee finds that the development would not be financially feasible, the Planning Board must [determine] [[decide]] recommend to the District Council which if any of the following measures authorized [under] by Chapter 59 or Chapter 50 should be approved to [accomplish] assure the construction of [the] all required MPDUs on site:

- (1) exceeding an applicable height limit, lower than the maximum height in the zone, that was recommended in a master plan or sector plan [[height limit]],
- (2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that was recommended in a master plan or sector plan [[residential density limit]], or
- (3) locating any required public use space off-site.

* * *

Sec. 2. Division 59-D-2 is amended as follows:

DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES.

* * *

59-D-2.4. Action by Planning Board.

* * *

59-D-2.42. Findings required for approval.

The fact that an application complies with all of the specific requirements and intent of the applicable zone does not create a presumption that the

application must be approved. The Planning Board can approve, or approve subject to modifications, an application only if it finds that the proposed development meets all of the following requirements:

* * *

(b) It would conform to the applicable sector plan or urban renewal plan. However, to [accommodate] permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a project plan may exceed, in proportion to the MPDUs [provided under Chapter 25A] [[that would]] to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing [Opportunity] Opportunities Commission, and the [Chair of the] Director of Park and Planning [Board], or their respective designees, find that [construction of] a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If [[a finding of financial infeasibility is made]] the Committee finds that the development would not be financially feasible, the Planning Board must [determine] decide which if any of the following measures authorized [under] by Chapter 59 or Chapter 50 should be approved to [accomplish] assure the construction of [the] all required MPDUs on site:

- 80 (1) exceeding an applicable height limit, lower than the maximum
81 height in the zone, that is recommended in a master plan or
82 sector plan [[height limit]],
83 (2) exceeding an applicable residential density limit, lower than the
84 maximum density in the zone, that is recommended in a master
85 plan or sector plan [[residential density limit]], or
86 (3) locating any required public use space off-site.

87 **Sec. 2. Effective date.** This ordinance takes effect as of April 1, 2005.

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89 This is a correct copy of Council action.

90
91 *Linda M. Lauer*

92 Linda M. Lauer, Clerk of the Council